

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

LUCIANO MOLINA RIOS,

Petitioner,

v.

STATE OF WASHINGTON,

Respondent.

Case No. 3:22-cv-5245-JHC-TLF

ORDER PERMITTING
PETITIONER TO SEEK LEAVE TO
AMEND PETITION AND
RENOTING PETITION

This matter is before the Court on petitioner's filing of a second petition for habeas corpus that also challenges the conviction at issue in this matter. *Rios v. State of Washington*, No. 3:22-cv-05931 JLR-TLF ("Rios II"), Dkt. 4 at 1. The Ninth Circuit has held that a later-filed habeas petition should generally be considered a motion to amend an earlier-filed pending habeas petition. *See Woods v. Carey*, 525 F.3d 886, 890 (9th Cir. 2008).

Petitioner seeks to bring an additional claim challenging the same conviction at issue in this matter, on the ground that the trial judge was biased due to his previous determination of probable cause. *Rios II*, Dkt. 4 at 1, 16. Here, the additional claim petitioner seeks to assert may lack merit. *See Liteky v. United States*, 510 U.S. 540, 551 (1994) (judges cannot be deemed biased or prejudiced as a result of information they learned in earlier proceedings); *Golden v. Kirkegard*, No. CV 15-07-M-DLC, 2015 WL 417900, at *1 (D. Mont. Jan. 30, 2015) (claim that trial judge was biased because

1 he previously ruled on probable cause was “frivolous” and “conclusively lacking in
2 merit”) (citing *Liteky*).

3 Therefore, the Court will not grant petitioner leave to amend at this time. Instead,
4 petitioner may file a motion seeking leave to amend, together with a proposed amended
5 petition. If plaintiff files a request for leave to amend, the Court will consider the motion
6 together with the merits of the existing petition.

7 Accordingly, the Court ORDERS as follows:

- 8 1. Petitioner is granted leave to file a motion to amend his petition to include
9 additional claims; plaintiff shall file any such motion, together with a proposed
10 amended petition, on or before **March 31, 2023**;
- 11 2. If petitioner files a motion to amend, respondent shall file a response on or
12 before **April 17, 2023**; petitioner may file a reply on or before **April 21, 2023**
13 and the motion shall be noted for that date;
- 14 3. The Clerk is directed to **renote** the decision on the merits of the petition in this
15 matter for **April 21, 2023**.

16 Dated this 21st day of February, 2023.

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20 Theresa L. Fricke
21 United States Magistrate Judge
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